THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 21652 of 1997

DATE 08.09.2005

Between:

The Depot Manager, APSRTC,
Narketpally Depot, Nalgonda District.

..... PETITIONER

AND

The Presiding Officer, Labour Court-III,
Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No. 21652 of 1997

O R D E R:

In this writ petition, the Depot Manager, APSRTC, Narketpally Depot, questions the award of the Labour Court III, Hyderabad in I.D.No.831 of 1993, dated 07.11.1996.

The facts, to the extent necessary for this petition, are that the second respondent was appointed as a driver in the APSRTC on 01.07.1988. On 11.05.1990, he was allotted with vehicle No.AEX 1314 to operate in the Hanumakonda-Nalgonda route starting at Hanumakonda at 14-15 hrs. A fatal accident occurred with Jeep No.ATN 3333, resulting in the death of the Jeep cleaner on the spot and the death of another unknown person in the Government Hospital, Jangoan, in addition to injuries to three others. The Accident Enquiry Committee consisting of the Depot Manager, Narketpally and

the Depot Manager, Nalgonda, enquired into the cause of accident and submitted their report concluding that the driver (second respondent) had driven the vehicle in a rash and negligent manner and had caused the accident. The sketch of the accident spot was relied upon to show that the bus driver (second respondent) had occupied 19 feet of the road whereas the jeep driver had occupied only 11 feet of the road and had the second respondent driven the bus on his side without coming into the road to an extent of 19 feet, the accident would not have occurred. The Accident Enquiry Report states that if the second respondent had not attempted to overtake the bullock cart, even after sighting the jeep coming in the opposite direction, the accident would not have resulted.

The Superintendent, Narketpally Depot, who conducted the preliminary enquiry into the accident, submitted his report, holding the driver responsible for the accident. Consequent thereto, the second respondent was placed under suspension with effect from 22.06.1990 and a charge sheet was issued with the following charges:

i. For having driven the vehicle AEZ 1314 of Narketpally depot on 11.05.1990 on the route Hanumakonda-Nalgonda, in a rash and negligent manner owing to lack of anticipation, and caused the accident resulted in the death of Sri. M.Rajeswar S/o. Rajalingam aged about 30 yrs. and one unidentified person as well as injuries to three more persons, which shows his gross negligence of his duty and constitutes serious misconduct on his part U/R 28(ix) (a) of APSRTC Employees (Conduct) Reg.'63.

ii. For having caused damages to the vehicle No.AEZ 1314 on 11.05.1990, which shows his gross negligence on his part and amounts serious misconduct under Reg. 28(ix) (a) of APSRTC Employees (Conduct) Reg.'63.

The second respondent submitted his explanation and as it was not found satisfactory, a domestic enquiry was ordered. The Enquiry Officer held that the charges leveled against the driver were proved beyond reasonable doubt. The disciplinary authority, on examining the enquiry report and the evidence on record, came to the conclusion that the proper punishment to be imposed on the second respondent was one of removal from service and accordingly a show cause notice was issued on 22.02.1991. The second

respondent submitted his explanation to the show cause notice and the disciplinary authority, vide proceedings dated 21.06.1991, upon holding that the petitioner had committed serious misconduct endangering the lives of road users, removed the second respondent from the services of the Corporation.

Aggrieved thereby, the second respondent filed an application under Section 2-A(2) of the Industrial Disputes Act before the Labour Court-III, Hyderabad. The Labour Court, by order dated 07.10.1995, held the domestic enquiry to be vitiated. Consequent thereto, one Sri B.S.Raju was examined as MW.1 and Exs.M.1 to M.38 were marked on behalf of the petitioner. The second respondent examined himself as W.W.1 and marked the judgment in C.C.No.156 of 1990, dated 06.07.1994, as Ex.W.1. While holding that there was a collision between the bus driven by the second respondent and the jeep coming in the opposite direction, the Labour Court held that there was no evidence that the driver had failed to take necessary precautions, that from the domestic enquiry report, it was seen that some of the passengers, in their written statement in the reverse of the S.R., had stated that one bullock cart was proceeding in front of the bus and one passenger of the jeep had stated that ten members were traveling in the jeep and that nothing had been said about reckless driving of the second respondent. The Labour Court held that the sketch, said to have been prepared and marked as Ex.M.1, was no use for the reason that the sketch could not establish negligence as to why the vehicle had come to that particular point, that these aspects had to be substantiated by persons who were present when the accident took place, that the sketch was merely proof of the place of the bus, but that did not establish rash and negligence on the part of the driver of the bus. The Labour Court relied on the criminal court judgment to show that though witnesses were present at the time when the accident took place, they had not stated anything against the driver that he was responsible for rash and negligent driving resulting in death and injuries to others and damage to the vehicle. The Labour Court held that there was no material on record that the petitioner had committed any kind of misconduct. After holding that the Management had failed to establish the misconduct committed by the workman, the Labour Court set aside the order of removal and directed the APSRTC to reinstate the workman into service with continuity of service, all attendant benefits and 25% of the back wages as the charges were not proved.

Sri V.T.M.Prasad, learned counsel for the petitioner, would submit that the Labour Court had failed to take into consideration relevant documents in Ex.M.4 (rough sketch) and Ex.M.11 (Joint Accident Committee Report). Learned counsel would refer to the Joint Accident Committee Report in Ex.M.11, which reads as under:

A.P.S.R.T.C.

No.M.1/2(8)90-NKP Office of the Depot Manager,

Narketpally, Dt 21.06.1990.

JOINT ACCIDENT ENQUIRY COMMITTEE REPORT

Present: 1. Sri G.Veera Reddy, Depot Manager,

Narketpally.

2. Sri K.Bhaskar Rao, Depot Manager, Nalgonda.

Sub:- ACCIDENTS: Accident to Vehicle No.AEZ 1314 of Narketpally Depot on 11.05.1990 on the route Hanamakonda – Nalgonda driven by Sri G.Prabhakar, E.251042, Driver – Regarding.

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We the Depot Managers G.Veera Reddy, and K.Bhaskar Rao of Narketpally and Nalgonda respectively perused the accident case pertaining to AEZ: 1314 driven by Sri G.Prabhakar, E.251042, Driver of Narketpally Depot on 11.05.90.

It is a case wherein AEZ: 1314 driven by Sri G.Prabhakar, E.251042, driver of Narketpally Depot on 11.05.1990 on the route Hanamakonda – Nalgonda in between Goverdhangiri and Kommala at about 14.15 hrs, while proceeding from Hanumakonda to Nalgonda met with an accident with Jeep No. ATN:3333. As a result of the accident Sri Makkera Rajeshwar, S/o.Rajalingam aged about 30 years cleaner of the jeep, resident of pyramoor died on the spot, while one other unidentified person died in the Government Hospital Jangaon on the same day and (3) more persons received minor injuries.

Sir G.Prabakar, the service driver stated in his explanation that the vehicle was

having the defect of pulling towards right side when applied brake and the defect was not rectified. He stated that Bullock-carts were going ahead of his bus and he did not attempt to over take them as he has noticed the jeep coming in his opposite direction. He further stated that he was driving the bus at 5 KMPH slowly and cautiously, but the jeep driver driven the jeep in Zig-Zag manner and hit the bus, thus caused accident. The Superintendent (T) conducted preliminary enquiry and submitted his report holding the service driver Sri G. Prabhakar responsible for the accident.

The contention of the driver that the bus had the defect of pulling right side does not bear any evidence. It is an after thought. Further from the sketch of the accident, it is seen that the service had occupied 19' of the road, while the jeep driver had occupied 11' of the road. Had the driven the bus on his side, particularly even after sighting the jeep, the accident would have not caused. If he had not attempted to overtake the Bullock-Carts and if he was driving cautiously at 5 KMPH as stated by him, the accident would have not caused.

Therefore, we opine that the service driver Sri G.Prbhakar driven the bus rash and negligently owing to lack anticipation and cause the accident resulted in the death of two person and injuries to 3 more persons. Hence we have come to the conclusion to place the driver under suspension with immediate effect.

DEPOT MANAGER DEPOT MANAGER,

NALGONDA. NARKETPALLY.

The Labour Court relied on the findings of the domestic enquiry though it had, by order dated 07.10.1995, held the domestic enquiry as vitiated. The statement of witnesses recorded in the domestic enquiry were erroneously taken into consideration by the Labour Court. As held by the Supreme Court, in **NEETA KAPLISH Vs. PRESIDING OFFICER, LABOUR COURT**, once the domestic enquiry is held to be vitiated, the entire evidence let in during the domestic enquiry has necessarily to be ignored and it is only on the basis of the evidence adduced afresh before it, is the Labour Court required to exercise its powers under Section 11-A to re-appreciate the evidence and determine the quantum of punishment.

It is well settled that this Court, while exercising its Certiorari jurisdiction, would not sit in appeal, nor would it re-appreciate the evidence on record. However, in cases where statutory tribunals take into consideration irrelevant material or ignore relevant material or the findings of the Tribunals are perverse or are based on no evidence, this Court would, of necessity, intervene. It is clear that the Joint Accident Enquiry Committee Report, marked as Ex.M.11, is a relevant document, which ought to have been considered by the Labour Court. Failure of the Labour Court to consider the Joint Accident Enquiry Committee report, would undoubtedly call for interference under Article 226 of the Constitution of India and the award of the Labour Court would be required to be set aside. Since it is the Labour Court, which has to appreciate the evidence on record, and not for this Court while exercising its jurisdiction under Article 226 of the Constitution of India to do so, the matter would be required to be remanded to the Labour Court for its consideration afresh.

Sri G.Ravi Mohan, learned counsel for the second respondent, would however submit that the workman had been placed under suspension on 22.06.1990, that the workman would be around 46 years of age as on date and since he had been reinstated into service, pursuant to the award of the Labour Court, in March 1997, has an unblemished record thereafter, the award of the Labour Court being set aside, would result in the workman who had been into service reinstated 8 years ago, having his services now terminated. Learned counsel, on instructions, would submit that to give a quietus to the entire dispute, the workman is willing to forego the back wages awarded in his favour by the Labour Court subject to the condition that the other part of the award is not interfered with.

It is no doubt true that this Court, while exercising its jurisdiction under Article 226, would not take upon itself the task of re-appreciating the evidence on record or to interfere with the punishment imposed by the employer, the fact that the workman, pursuant to the award of the Labour Court dated 07.11.1996, was reinstated into service and has ever since been working with the APSRTC without blemish for the past 8 years, cannot also be ignored. In the peculiar facts and circumstances of the present case, in view of the fact that workman

has expressed his willingness to forego the back wages awarded by the Labour Court, since it is not disputed that consequent to his reinstatement in March 1997, the workman has an unblemished record for the pass eight years and in order to give a quietus to the entire dispute which has been pending for the past 13 years, I deem it appropriate to record this concession of Sri G.Ravi Mohan that the workman would forego the entire back wages awarded by the Labour Court, if the award in other aspects is not interfered with and exercise discretion conferred under Article 226 of the Constitution of India in favour of the workman and not interfere with the award of the Labour Court.

The writ petition is accordingly disposed of. There shall be no order as costs.

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08.09.2005

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